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COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)

Policies and Rules Concerning)
Toll Fraud)

CC Docket No. 93-292

**REPLY COMMENTS OF
TELE-COMMUNICATIONS ASSOCIATION**

Tele-Communications Association ("TCA"), by its attorneys, respectfully submits its reply comments in the above-captioned proceeding. As discussed herein and in TCA's opening comments, the Commission should assign responsibility for toll fraud among customers, carriers, and CPE vendors so that each group has the maximum incentive to curtail unauthorized usage.

I. INTRODUCTION

The opening comments in this proceeding reveal sharp disagreement between customers and carriers. At least fifty-nine parties, including TCA and many other telecommunications customers, contended that the current policy of placing full responsibility on customers -- who are least able to detect and prevent fraud -- unreasonably insulates carriers and vendors from incentives to safeguard their networks and equipment. Many of these parties, including TCA, recommended constructive, detailed approaches under which each affected industry segment would bear responsibility for minimizing unauthorized access to the portion of the network within its reasonable control.

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In contrast, the majority of carriers disclaimed any responsibility for toll fraud. These commenters argued that marketplace forces will address the toll fraud problem, that users are uniquely capable of controlling unauthorized access, and that forcing carriers to bear liability would raise rates for all consumers.

As discussed herein, the carriers' position would perpetuate the indefensible policy of absolute liability for customers, under which toll fraud has become a multi-billion dollar industry. Users cannot control the entire network, and should not be forced to bear full liability for a problem that carriers are better positioned to mitigate. The policy advocated by TCA would recognize this fact by delineating appropriate responsibilities, and creating efficient incentives, for each affected industry segment.

II. THE MAJORITY OF COMMENTERS SUPPORT ASSIGNING LIABILITY SO THAT ALL PARTIES WILL HAVE MAXIMUM INCENTIVES TO REDUCE FRAUD.

TCA and a majority of other commenters showed that placing all liability for fraud on customers is ineffective and inequitable.¹ Under the current approach, carriers have been slow to develop means of detecting and deterring fraud, equipment manufacturers have designed systems with

¹ See, e.g., Comments of: AIL Systems; Amsouth Bank of Florida; Bessemer and Lake Erie Railroad; Ernst & Young; Indiana University School of Education; Pinellas County, Florida; American Petroleum Institute; FMC Corporation; Planned Parenthood of New York City; Reynolds and Reynolds; Pennsylvania Public Utility Commission; Utilities Telecommunications Council; and Metro-North Commuter Railroad.

significant vulnerabilities, and unauthorized usage has reached epidemic proportions. TCA consequently recommended that liability be re-assigned so that customers, LECs, IXC's, and equipment vendors each have an incentive to utilize effective fraud prevention measures.

Having reviewed the comments of other interested parties, TCA believes that the articulation of responsibilities set forth in its initial filing is realistic and enjoys broad conceptual support from other customers. Under TCA's plan, customers, LECs, IXC's, and equipment vendors would each bear specific responsibilities to minimize toll fraud.² In particular:

- Customers would be required to reduce the vulnerability of their premises equipment by:
 - maintaining accurate lists of all employees and addresses getting remote maintenance and DISA authority;
 - controlling the transfer of codes between employees;
 - providing timely notification to the carrier to disable an authorization code when the customer has reason to believe the code is compromised;
 - following the carrier's and manufacturer's recommended minimum requirements to prevent unauthorized access;
 - including these obligations in any PBX maintenance contract; and

² TCA Comments at 3-8.

- cooperating with the carrier to investigate and prosecute instances of unauthorized usage.

Customers that fulfill these requirements would be excused from liability for unauthorized usage. If the fraud was perpetrated by a customer's employee, the customer's liability would cease fifteen minutes after it notified the carrier to disable the code. In addition, when a customer is liable for any fraudulent activity, it would only be required to pay the long distance carrier's out-of-pocket costs, so that no profits are made from unauthorized use.

- Local exchange carriers would be required to minimize unauthorized access to their networks by making blocking and screening services widely available to business users, offering Originating Line Screening and Billed Number Screening, and preserving the use of "1" as a toll indicator. These readily achievable steps would greatly facilitate the ability of IXC's and end users to minimize unauthorized access.

- Long distance carriers would be required to provide real-time monitoring of both inbound (800) and outbound calls, and to give specific and detailed warnings about the fraud risks inherent in particular service offerings. To assure widespread, non-discriminatory availability of these capabilities, they should be provided as inherent, non-chargeable features of long distance offerings.

- Equipment manufacturers and vendors would have to inform customers how to utilize their equipment so as to minimize exposure to unauthorized usage, to incorporate mechanisms that deter fraud, and to minimize the possibility of fraud through the remote access maintenance port. In this regard, TCA recommended requiring manufacturers to bear liability for any fraud perpetrated through the maintenance port.

This framework would allow marketplace forces to operate by reinforcing incentives for carriers and manufacturers to develop and utilize better detection and prevention methods. With appropriate incentives to deploy such capabilities, fraud would be minimized for all customers in a fair, cost-effective manner.³ Without such incentives, however, individual customers will continue to bear full responsibility for fraud on a random and inequitable basis, and fraud will continue to grow unabated.

³ TCA notes that Hewlett-Packard and Quantum Logic both filed comments stating they were developing new technologies which carriers can use to prevent fraud on their networks. Comments of Hewlett-Packard Company at 1-3; Comments of Quantum Logic, Inc. at 1-2.

III. THE ARGUMENTS AGAINST CARRIER LIABILITY CANNOT WITHSTAND SCRUTINY.

In contrast to the reasonable position advanced by TCA, most carriers contended that liability should remain on the customer, who they assert is best positioned to control fraud.⁴ Several carriers also suggested that market forces will create appropriate incentives to deploy anti-fraud measures, and warned that if carriers are held liable for toll fraud losses, they will have to raise rates to all customers.⁵ These arguments are baseless.

First of all, customers have extremely limited ability to minimize fraud across the entire network. Clearly, they can take certain steps to limit the possibility that their PBXs will be compromised -- and under TCA's plan, they would be required to do so. Carriers, however, are best situated to identify and terminate fraud on a timely basis. Technology exists for any carrier to recognize likely fraud on a virtually real-time basis. In most cases, however, customers will not realize fraud has occurred until they

⁴ See, e.g., Comments of NYNEX at 9-10; Comments of Pacific Bell and Nevada Bell at 10-11; Comments of Rochester Telephone Corporation at 4-5; Comments of AT&T at 10-13.

⁵ See, e.g., Comments of MCI Telecommunications Corporation at 9; Comments of Rochester Telephone Corporation at 6; Comments of NYNEX at 9-10.

receive a billing statement for the affected time period -- one or two months after the fact.

Nor is the carriers' reliance on "marketplace forces" well-founded. Customers already do what they can to prevent unauthorized usage, but fraud remains a pervasive and growing problem. Carriers, in contrast, are only just beginning to take steps to minimize unauthorized access. The reason for this delay is clear: carriers profit from fraudulent calls, just as they do on legitimate usage. With all carriers taking a hard line on liability -- often pointing to FCC policies as constraining their ability to share responsibility -- there is no marketplace pressure compelling them to deploy effective safeguards in a timely manner.

Finally, the argument that placing liability on carriers will raise costs for all users simply misses the point. The purpose of re-assigning liability is to minimize fraud to the greatest extent possible so that the net social loss will be lower than under current policies. In a competitive marketplace, requiring carriers to bear responsibility for fraud that users cannot reasonably prevent would spur the development of the most efficient and cost-effective anti-fraud technology.⁶ Indeed, several carriers concede that,

⁶ The need for such incentives is evidenced by the fact that several carriers even opposed a requirement that they warn customers of the possibility that fraud is occurring or provide measures that customers can utilize to reduce fraud.

through the use of monitoring systems and newly developing technologies, they can significantly reduce the amount of unauthorized use.⁷ Consequently, apportioning liability in accordance with TCA's proposal would advance the public interest at a cost that, in the long run, would be negligible when spread over all users.

IV. CONCLUSION

TCA believes that its proposal will reduce unauthorized access by specifying responsibilities for minimizing toll fraud and creating appropriate marketplace incentives for all affected industry segments -- customers, LECs, IXC's, and


⁷ See, e.g., Comments of American Telephone and Telegraph Company at 10-14; Comments of NYNEX at 4, 17-19; Comments of Pacific Bell and Nevada Bell at 4-6, 8-9; Comments of MCI Telecommunications Corporation at 8, appendix.

equipment manufacturers -- to discharge those responsibilities.

Respectfully submitted,

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